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**COPY MAILED**  
**MAY 10 2004**  
**OFFICE OF PETITIONS**

In re Application of  
Mellardo  
Application No. 09/295,212  
Filed: 21 April, 1999  
Attorney Docket No. Mellardo-1

ON PETITION

This is a decision on the petition filed on 21 April, 2004, to revive the application under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition is **DISMISSED**.

**NOTES:** (1) Any request for reconsideration (with fee) of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.137(b)".

(2) Thereafter there will be no further reconsideration.

**BACKGROUND**

The record reflects that:

- Petitioner failed to reply timely and properly to the Drawings Requirement accompanying the Notice of Allowability and Notice of Allowance and Fees Due mailed on 22 October, 2003, with a reply due under a non-extendable deadline on or before 22 January, 2004;

- a result, the application was deemed abandoned after midnight 22 January, 2004;
- Notice of Abandonment was mailed on 15 March, 2004;
- with the instant petition and drawings, Petition failed to authorize the petition fee—although a Deposit Account was identified, no box was checked to indicate authorization of charges.

### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unintentional." 35 U.S.C. §41(a)(7). The regulations at 37 C.F.R. §1.137(b) set forth the requirements for a petitioner to revive a previously unintentionally abandoned application under this congressional grant of authority. Petitioner must be diligent in attending to the matter.<sup>1</sup> Failure to do so does not constitute the care required under Pratt,<sup>2</sup> and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>3</sup>))

#### Allegations as to Unintentional Delay

Petitioner has failed to satisfy the fee requirements under 37 C.F.R. §1.137(b).

### CONCLUSION

Because Petitioner satisfied the burdens set forth under 37 C.F.R. §1.137(b) hereby is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>1</sup> See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office *supra*.

<sup>2</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); see also: Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).


<sup>3</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

By mail: (Effective 1 May, 2003)<sup>4</sup>  
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Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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<sup>4</sup> To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at [www.uspto.gov](http://www.uspto.gov).